

## **The principal**

*Read the case carefully.*

*Answer the sets of questions one at a time:*

*Complete the first one before moving on to the second).*

You lead the Coordination of Patrimonial Analysis and Investigations of the National Tax Collection Agency.

From the Coastal Regional Office, you have been sent for analysis the results of a programmed inspection carried out to a company called Appleprod SA.

The operation under analysis is a sale of a chain of stores that includes the real estate (commercial properties), the merchandise and the commercial management (licenses and permits for use, customers, credit with suppliers, etc. and the business fund) and the brand name.

This chain operates in all the tourist coast of the country, and in some exclusive resorts abroad. The total sale price was US\$ 5.5 million.

The purchase was made by Alberto Rodett, on commission, without declaring the principal.

Rodett is a taxpayer with an active tax code, registered under the categories of "Financial intermediation activities" and "real estate broker".

According to what was documented by the intervening notary, 50% of the payment was made by bank transfer when the initial agreement was signed, and the remaining 50% with the deed and the final documents of purchase and sale of the real estate and assignment of the goodwill and the rights over the trademark. The latter payment was made in cash.

The accounting registries of Appleprod SA corroborate the transaction, the amount, and the form of payment.

The notary made the correct tax withholdings as withholding agent.

The company correctly reported the transaction in its income tax declarations and the substitution of assets in its asset declaration and in its accounting and financial statements.

The cross-checking of information with the taxpayer Rodett's economic capacity yields serious inconsistencies.

Your unit collected Rodett's Income Tax and Personal Property Tax returns and established that, if the returns for 2022 and 2021 are reviewed, neither the income declared as income nor the goods that make up his taxable assets justify funds for such a purchase. He could only justify 40% of the price paid.

The taxpayer records income that, discounting consumption, would justify a saving equivalent to about U\$S 500,000 for 2021 and the sale of a field during the fiscal year 2020 for U\$S 1.5 million. This money, according to his asset declarations for 2020-21-22, remained as savings in a bank account in Luxembourg.

After the crosschecks of information of bank accounts, relations, etc., it is established that the amount of 1.5 million was transferred to a current account of Rodett in a purchase-sale operation of bonds from a bank in Luxembourg.

It is decided to issue a summons to the taxpayer for the undeclared income that would have been applied to the purchase.

Rodett states that he actually used the money he had saved from the 2020 sale and his total rent to pay almost 50% of the purchase price. And that the balance was obtained from a private loan from his brother.

According to the private mutual agreement between the brothers and Rodett's explanation, the business model projected for the commercial chain he acquired would allow him to repay half of the loan in three years and for the rest he would form a company with his brother and recognize the difference as a capital contribution.

At that time, he would declare the new company as the principal of the purchase, leaving the commercial chain as the property of the legal entity and both brothers as partners.

The verification is extended to the affidavits of José Rodett, the lender brother and it is noticed that during 2023 he has submitted Rectifying Affidavits of the original Personal Property Declarations of the years 2015/16/17/18/19/20/21/22. In those rectifications he stated that at the end of 2015 he had the sum of 3 million dollars in cash that he kept as money in a safe deposit box. This money is declared in the same way in the successive rectifications of affidavits of assets until 2022. And he states that this money is the one he used for the loan.

## **1.- SET OF QUESTIONS 1**

**1.1. What would be the hypothesis of investigation?**

**1.2. Would you make any claim for undeclared goods and taxes not paid to the agency?**

**1.3. To whom and why?**

**1.4. Would you intervene with the Criminal Department for the respective complaint?**

**1.5. What offenses should be included? Attention: Carefully individualize the facts that constitute the criminal tax offense in case a tax offense has been verified.**

**1.6. What evidence would you and your team try to obtain and submit to the prosecution and what suggestions would you make to the Prosecutor if he/she consults you?**

The Director of the Criminal Department files the complaint with the background and information that you send him.

You are summoned by the Prosecutor to whom you satisfactorily explain your investigation and the elements that support a charge for violation of the Criminal Tax Law.

The prosecutor accuses, the case goes to trial and at the hearing, Alberto Rodett says that the money used for the purchase (100 percent) belongs to a Cortez family, which apparently has a logistics company called Rio Arriba SA, but actually uses the boats for clandestine transportation of narcotics.

He states that he provides the Rodett family and his company with financial investment services, some of them legitimate, but others for the concealment of funds through front men and the externalization of illicit funds.

That all the money of the operation (including that which appeared in his sworn statements) actually belongs to the illicit business of this family. That the purchase was made on commission at the request of this family, since, once the operation was completed, they were going to indicate the name of the individual or legal entity that was to be declared the principal. He explained that for the operations he carried out by himself or through third parties, he charged a commission that could reach up to 15 percent of the amount he had managed to transfer, hide or launder, depending on the case.

## ***2.- SET OF QUESTIONS 2***

***2.1 How does Rodett's statement at trial affect the prosecution for the criminal tax law violation?***

***2.2 What should the agency you work for do?***

***2.3 What should the Prosecutor do at trial?***